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Ralph E. Jocke
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February 6, 2007

Mail Stop Appeal Brief - Patents
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Re:	**Application No.:**	**09/193,564**
	Confirmation No.:	**2181**
	Art Unit:	**3621 (Examiner Pierre Eddy Elisca)**
	Appellants:	**Drummond, et al.**
	Title:	**Automated Banking Machine and System**
	Docket No.:	**D-1077+6**

Sir:

Please find enclosed a Reply Brief pursuant to 37 C.F.R. § 41.41 in response to the Examiner's Answer dated December 26, 2006 for filing in the above-referenced application.

No fee is deemed required. However, the Commissioner is authorized to charge any necessary fee associated with the filing of this Reply Brief and any other fee due to Deposit Account 09-0428.

Very truly yours,

Ralph E. Jocke
Reg. No. 31,029

CERTIFICATE OF MAILING BY EXPRESS MAIL

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D-1077+6

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellants: **Drummond, et al.**	)	
	)	
Application No.: **09/193,564**	)	Art Unit 3621
	)	
Confirmation No.: **2181**	)	
	)	Patent Examiner
Filed: **November 17, 1998**	)	Pierre Eddy Elisca
	)	
Title: **Automated Banking**	)	
Machine and System	)	

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3RD REPLY BRIEF OF APPELLANTS
PURSUANT TO 37 C.F.R. § 41.41

Sir:

The Appellants hereby submit their 3rd Reply Brief concerning the above-referenced

Application. This Reply Brief is filed pursuant to 37 C.F.R. § 41.41 in response to the 3rd

Examiner's Answer ("Answer"), dated December 26, 2006. The Answer is the result of a several

Remand/Orders to the Examiner from the Board of Patent Appeals and Interferences ("Board").

REAL PARTY IN INTEREST

The Assignee of all right, title and interest to the above-referenced Application is

Diebold, Incorporated, an Ohio corporation.

STATUS OF CLAIMS

Claims 1-20 are pending in the Application.

Claims rejected:	1-20
Claims allowed:	none
Claims confirmed:	none
Claims withdrawn:	none
Claim objected to:	none
Claims canceled:	none

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The questions presented in this appeal are:

1).   Whether claims 1-4, 7-8, 10-14, and 17-20 are unpatentable pursuant to 35 U.S.C. § 102(e) as being anticipated by Anderson, et al. (US 5,706,442) (hereinafter "Anderson").

2).   Whether claims 5-6, 9, and 15-16 are unpatentable pursuant to 35 U.S.C. § 103(a) over Anderson in view of Zeanah, et al. (US 5,933,816) (hereinafter "Zeanah").

ARGUMENT

The following dates and papers are associated with this application:

1.	04/20/01	Non final Rejection
2.	09/26/01	Final Rejection
3.	01/29/02	Appeal Brief
4.	04/09/02	1st Examiner's Answer
5.	05/09/02	1st Reply Brief
6.	09/18/02	Order from Board to Examiner
7.	10/29/02	2nd Examiner's Answer
8.	01/28/03	2nd Reply Brief
9.	07/12/04	Remand from Board to Examiner
10.	06/07/05	Order from Board to Examiner
11.	08/31/06	3rd Examiner's Answer
12.	10/27/06	Order from Board to Examiner
13.	12/26/06	4th Examiner's Answer

Appellants' Reply to the "Grounds of Rejection" section of the Answer

As best understood, the rejections set forth (at pages 3-10) in the Answer appear to correspond to the grounds previously presented in the Office Actions dated September 26, 2001 and April 20, 2001, from which appeal was initially taken. Thus, Appellants respectfully submit that the rejections set forth in the Answer have already been fully addressed in Appellants' Appeal Brief filed on January 29, 2002. Therefore, please note Appellants' previous arguments

(in their Appeal Brief) regarding all the issues of record. Appellants' Appeal Brief filed January 29, 2002; their Reply Brief filed May 9, 2002; and their Reply Brief filed January 28, 2003 are each incorporated herein by reference.

Appellants' Reply to the "Response to Argument" Section of the Answer

The Answer includes a "Response to Argument" section beginning on page 10. However, this section provides no new support for the rejections. Most of this section's "answer" consists of merely repeating the allegations already presented in the "Grounds of Rejection" section of the Answer. Thus, Appellants respectfully submit that the Office's "answer" has already been fully addressed in Appellants' Appeal Brief. The Office still has not provided any evidence of anticipation nor any factual support for a *prima facie* conclusion of obviousness. Furthermore, the "Response to Argument" section of the Answer only addresses a portion of Appellants' many arguments made in the Appeal Brief in support of allowance.

Appellants respectfully submit that the Answer also fails to correctly ascertain the level of one having ordinary skill in the art. This application claims priority back to 1996. Appellants respectfully submit that the Office did not reach a conclusion based on facts gleaned only from the prior art. That is, the Office incorrectly attempts to apply today's level of one having ordinary skill in the art. The Office's attempted usage of hindsight to breathe life into the many allegations set forth in the rejections is legally impermissible.

The Answer only addresses what are designated as issues "a," "b," "c," and "d." As best understood, issues "a," "b," and "c" only correspond to steps a, b, and c of claim 1. As best understood, issue "d" only corresponds to the "accessing a document" step of claim 2.

Issue A

As previously noted, as best understood, issue "a" is directed to step (a) of claim 1.

Claim 1 was rejected under 35 U.S.C. § 102(e) as being anticipated by Anderson.

The Answer (on page 10) tries to rebut Appellants' Appeal Brief arguments (on pages 9-10) that Anderson does not teach "At least one HTTP record which includes data corresponding to operating data, where the operating data is operative to control operation of an automated transaction machine." The Answer alleges that the features are disclosed by Anderson at col. 2, lines 21-47, which reads:

> The Conductor System Architecture (Conductor) and its related protocols provide a robust suite of on-line Interfaces for use by applications, financial service providers, Web (hyper-text transfer protocol--HTTP) servers, and other clients to obtain and manipulate financial information for users of the system. Applying principles of modularity and abstraction, distributed systems technologies are used to define the major components of Conductor and their interrelationships to allow delivery of diverse types of financial services over a wide area network. Sources of data may be as varied as the Interfaces to it. Financial information systems using the approach of Conductor are easily extensible because Conductor is based on a platform-portable, language-independent distributed object framework. Client components and server components work in concert to provide timely financial information to users of an on-line financial information system built using Conductor. Use of the distributed approach of a client/server model permits the easy integration of new services and providers for the system. For example, server components of Conductor may easily serve as back-end resources for existing on-line service providers. The distributed approach also allows applications running in

the system to be accessible through a number of presentation tools or users interfaces (collectively, clients): for example, native Microsoft Windows applications, Web (hyper-text mark-up language--HTML) browsers, text-terminals, X.25 transactions, even voice telephony.

As can be seen, nowhere in this relied upon section does Anderson link HTTP records with operating data that can control operation of an automated transaction machine.

The Answer states that it specifically relies on the cited portion "on-line Interfaces for use by applications, financial service providers, Web (hyper-text transfer protocol--HTTP) servers, and other clients to obtain and manipulate financial information for users of the system." However, this relied upon portion of Anderson only discloses a suite of on-line interfaces that obtain and *manipulate financial information* for users of the system. Anderson's "financial information" doesn't constitute operating instructions for controlling operation of an automated transaction machine.

The Office does not read claim 1 as a whole. Anderson does not teach an HTTP record associated with operating data to control operation of an automated transaction machine (e.g., ATM). Nor is Anderson, as apparently alleged by the Office, directed to using an HTTP record to control ATM operation. Where does Anderson specifically teach an HTTP record associated with data (e.g., instructions) that can <u>control operation</u> of an automated transaction machine? Anderson doesn't. Anderson does not teach the recited relational links.

The Answer also alleges that "HTTP is for viewing a specific web page or to view a specific operating data at an automated transaction machine." However, Anderson does not teach that "HTTP is for <u>viewing</u> a specific web page or to view a specific operating data at an

automated transaction machine." Nor is there any prior art evidence of record that provides any support for the allegation.

Even if Anderson did teach the alleged "viewing," it is unclear how "<u>viewing</u> a specific web page" relates to an HTTP record associated with "operating data" that can "<u>control</u> operation</u>" of an automated transaction machine. That is, "<u>viewing</u>" a web page is unrelated to <u>controlling</u> operation of an automated transaction machine.

Furthermore, it is unclear how one could "view a specific operating data," especially using HTTP, as alleged by the Office. It is also unclear how something that is "viewed" is operative to <u>control</u> operation of a machine. The Office does not explain the rejection. Nor can it, because the rejection is unsupported, inapplicable, and unreasonable. Anderson does not anticipate claim 1.

Issue B

As previously noted, as best understood, issue "b" is directed to step (b) of claim 1. Claim 1 was rejected under 35 U.S.C. § 102(e) as being anticipated by Anderson.

The Answer (on page 10) tries to rebut Appellants' Appeal Brief argument (on page 10) that Anderson does not teach "accessing a record data through a server with a computer in an automated transaction machine." The Answer alleges that the features are disclosed by Anderson at col. 2, lines 20-25, 33-39, and 51-67, which reads:

> The Conductor System Architecture (Conductor) and its related protocols provide a
>
> robust suite of on-line Interfaces for use by applications, financial service providers,
>
> Web (hyper-text transfer protocol--HTTP) servers, and other clients to obtain and
>
> manipulate financial information for users of the system. (lines 20-25);

Client components and server components work in concert to provide timely

financial information to users of an on-line financial information system built using

Conductor. Use of the distributed approach of a client/server model permits the easy

integration of new services and providers for the system. (lines 33-39); and

Preferably, users connect to the suite of on-line financial services in the

Conductor Network via the Internet 12. Methods for providing services via the Internet

are well-known in the art and are not explained here. Host computers in the network are

accessible worldwide from any site with TCP/IP name resolution and packet routing to

the conductor.com domain. Preferably, host computers running the Windows NT

Operating System and the UNIX Operating System are used in the distributed

environment. Clients and servers may rim on any of twenty operating system. Multiple

user interfaces to applications that are part of the Conductor Network are implemented as

different types of clients. As shown in FIG. 1, a user may communicate with a financial

application via a Web (hyper-text markup language--HTML) browser 10 or via the

CompuServe Information Service 14 using the CompuServe Information Manager for

Windows (WinCIM) 16. (lines 51-67).

The Appellants respectfully disagree. Again, the Office does not read claim 1 as a whole.

The Office ignores that claim 1, step (b), recites "accessing the record data through the server

with a computer in an automated transaction machine," where (from step a) the record data

corresponds to operating data that can control automated transaction machine operation.

Anderson does not teach accessing an HTTP record through a server using "a computer in

an automated transaction machine," especially where the HTTP record is associated with

operating data that can <u>control operation</u> of the automated transaction machine. At best, the

relied upon sections of Anderson only disclose a generic client-server relationship between computers to access financial information. Again, Anderson cannot anticipate claim 1.

Issue C

As previously noted, as best understood, issue "c" is directed to step (c) of claim 1. Claim 1 was rejected under 35 U.S.C. § 102(e) as being anticipated by Anderson.

The Answer (on page 11) tries to rebut Appellants' Appeal Brief argument (at the paragraph bridging pages 10-11) that Anderson does not teach "loading data corresponding to operating data in a memory of the machine." The Answer alleges that the features are disclosed by Anderson at col. 4, lines 45-67 and Figure 2, which reads:

> Referring to FIG. 2, a diagram of the client and server components of a financial information system based on the Conductor System Architecture is shown. Among the server components supported by Conductor are databases. For example, financial information of interest to users of the system is contained in different databases 28, 34, 40 within the distributed environment. Each database has its own access mechanism 26, 32, 38. As explained earlier, among the methods for accessing a system based on the architecture are a Web (hyper-text markup language-HTML) browser 10 that communicates through a Web Server 20 or a native Windows application 12. Regardless of the user interface or client in operation (e.g., Web browser 10 or Windows application 12), a financial information request that includes the name of a financial information service 42, 44 may be transmitted from the client 10, 12 to be processed by the name server 22. In the case of the Windows application 12, the financial information request 42 may be transmitted directly to the name server 22. In the case of the Web browser 10, the financial information request may be processed through a Web server 20 that

communicates with the name server 22 to determine the location of the financial server to process the request. This approach therefore allows financial services to be implemented as objects.

The Appellants respectfully disagree. The relied upon section of Anderson does not teach recited step (c). Again, the Office does not read claim 1 as a whole. The Office ignores that claim 1, step (c), actually recites "loading data corresponding to the operating data in a memory of the machine." That is, "the operating data" refers back to the (step a) operating data that is operative to control operation of the automated transaction machine, and "the operating data" is associated with an HTTP record accessed in step (b).

Anderson does not teach loading data into a memory of an automated transaction machine, especially where the data is associated with controlling operation of the machine, and further especially where the data is associated with an accessed HTTP record. At best, the relied upon section of Anderson only discloses that financial information of interest to users is contained in different databases (28, 34, 40). However, these databases do not constitute a memory of an automated transaction machine. Nor does the financial information stored in these databases constitute "operating data" that can "control the operation" of an automated transaction machine. Again, Anderson cannot anticipate the claim 1.

Issue D

As previously noted, as best understood, issue "d" is directed to the "accessing a document" step of claim 2. Claim 2 was rejected under 35 U.S.C. § 102(e) as being anticipated by Anderson.

The Answer (on page 11) tries to rebut Appellants' Appeal Brief argument (on page 15) that Anderson does not teach "accessing a document with a browser operating in a computer of the automated transaction machine." The Answer alleges that the features are disclosed by Anderson at col. 2, lines 61-67, which reads:

> Multiple user interfaces to applications that are part of the Conductor
>
> Network are implemented as different types of clients. As shown in FIG.
>
> 1, a user may communicate with a financial application via a Web
>
> (hyper-text markup language--HTML) browser 10 or via the
>
> CompuServe Information Service 14 using the CompuServe Information
>
> Manager for Windows (WinCIM) 16.

The Appellants respectfully disagree. Claim 2 recites that "step (b) comprises accessing a [HTML] document with a browser operating in a computer of the automated transaction machine," which Anderson does not teach. Anderson does not teach using an automated transaction machine browser to access operating data via HTML documents to control operation of the machine.

As previously discussed, Anderson does not teach having HTTP records (or HTML documents) associated with data (e.g., instructions) operative to control operation of an automated transaction machine. Nor does Anderson teach accessing an HTML document with a browser, especially where the browser operates in a computer in an automated transaction machine, and further especially where the HTML document is associated with data operative to control operation of the machine.

The Office apparently realizes the deficiency in Anderson for the relied upon teaching, because the Answer (on page 11) further alleges that "on-line financial service information *can* also be interpreted as an ATM" (i.e., the alleged automated transaction machine). The Appellants also respectfully disagree with this allegation. Nor is the allegation factually supported in Anderson. The allegation at best smacks of attempted "obviousness."

Nor is the allegation reasonable to one skilled in the art. It is unclear how "information" could be interpreted as a "machine." The Office misinterprets the claims and also tries to redefine well-established terms in the art.

Further, anticipation may not be established based on probabilities or possibilities (such as what Anderson's financial service information may be alleged as). *In re Robertson*, 169 F.3d 743, 49 USPQ 2d 1949 (Fed. Cir. 1999).

As discussed in more detail in the Appeal Brief, Anderson does not teach a "machine." It follows that Anderson cannot teach the specifically recited "automated transaction machine" or the automated transaction machine "browser."

Anderson does not anticipate claim 2. Therefore, Appellants respectfully submit that the 35 U.S.C. § 102(e) rejections should be withdrawn.

35 U.S.C. § 103(a) Issues

The Answer (on page 11) tries to rebut some of Appellants' Appeal Brief arguments against the Anderson/Zeanah rejections of dependent claims 5-6, 9, and 15-16. The Office does not address all of the Appellants' arguments concerning these claims.

The Office admits (at Answer page 6) that Anderson fails to teach or suggest that "operating data includes applets" (e.g., claims 5 and 9 [and 18]). The Office alleges that Zeanah

teaches "operating data that includes applets or java" at col. 19, lines 26-33; col. 22, lines 26-30; col. 28, lines 41-48, and the Abstract. The Appellants respectfully disagree.

The Appellants respectfully submit that the Office does not read the dependent claims as a whole, but rather in a vacuum. Appellants respectfully submit that Zeanah cannot overcome both the admitted and previously discussed deficiencies of Anderson. Zeanah does not disclose or suggest the recited features and relationships which are not found in Anderson. For example, Zeanah does not teach or suggest (e.g., claim 5/1) a data store which includes a plurality of records with operating data that can control operation of an automated transaction machine, especially where the operating data includes applets.

The Office has not established a *prima facie* showing of obviousness. Appellants have shown that neither Anderson nor Zeanah, taken alone or in combination, teaches or suggests the recited features and relationships. The Answer is also devoid of any teaching, suggestion, or motivation for combining features of the references as alleged. Nor would it have been obvious to one having ordinary skill in the art to have modified Anderson as alleged to have produced Appellants' recited invention. Nor would the alleged modification of Anderson (if somehow even possible) have resulted in the recited invention. Therefore, Appellants respectfully submit that the 35 U.S.C. § 103(a) rejections should be withdrawn.

Other Reasons Why Anderson Does Not Anticipate the Claims

Appellants respectfully request that the Board fully consider their many other reasons (discussed in the Appeal Brief) why Anderson does not anticipate the claims 1-4, 7-8, 10-14, and 17-20. For example, as discussed in more detail in the Appeal Brief, Anderson additionally fails to teach:

- a plurality of HTTP records accessible through an HTTP server, where at least one record data corresponds to operating data to control an automated transaction machine; accessing the record data through the server with an automated transaction machine computer; and loading data corresponding to the operating data in memory of the automated transaction machine (e.g., claim 1).

- a system comprising an HTTP server; records accessible through the server, with at least one record including machine operating data therein; an automated transaction machine including a computer, computer memory, and software executable in the computer; where the software can cause a record to be accessed and have data corresponding to the accessed record's operating data stored in the memory of the automated transaction machine (e.g., claim 7).

- operating a transaction function device of an automated transaction machine responsive to operating data loaded in a memory of the machine, especially where a document accessed by the machine through an HTTP server included the data (e.g., claim 17).

- loading operating data in automated transaction machine memory responsive to instructions in an HTML document accessed with a browser of the machine (e.g., claim 3).

- a computer operative to access a second record and store data in machine memory responsive to a change in condition of a transaction function device (e.g., claim 8).

- dispensing cash responsive to an operating data applet (e.g., claim 18). The Office admits (at Answer page 6) that Anderson fails to teach or suggest "applets." Thus, the Office admits Anderson can't anticipate claim 18.

Appellants' Appeal Brief also includes many more examples as to why Anderson does not anticipate the claims.

CONCLUSION

For sake of brevity and to avoid further repetition of the Appeal Brief, attention is again directed thereto for additional reasons as to why the references do not anticipate nor render obvious the appealed claims. More detailed remarks regarding all the issues of record, including support for the patentability of each claim, can be found in the Appeal Brief.

Each of Appellants' pending claims specifically recites features and relationships that are neither disclosed nor suggested in the applied prior art. Furthermore, the applied prior art is also devoid of any teaching, suggestion, or motivation for combining features thereof to produce the recited invention. For these reasons it is respectfully submitted that all the pending claims are allowable.

Respectfully submitted,

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